(12)

No. 88-2109

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

THE STATES OF KANSAS AND MISSOURI,
AS *PARENS PATRIAE*,

Petitioners,

V.

THE KANSAS POWER & LIGHT COMPANY
AND
UTILICORP UNITED, INC.,

Respondents.

BRIEF OF FORTY-SIX STATES AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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The Daily Record Co., Baltimore, MD 21202

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BRIEF OF FORTY-SIX STATES AS AMICI CURIAE IN SUPPORT OF PETITIONERS

INTRODUCTION

The States of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigian, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New

Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming, and Oklahoma ("Amici States") submit this brief in support of the Brief submitted by the Petitioners, the States of Kansas and Missouri.

INTERESTS OF THE AMICI STATES

The Attorneys General of the Amici States are the chief law enforcement officers of their states and are charged with the duty of enforcing both state and federal antitrust laws. In their parens patriae capacity, the Amici States, represented by their attorneys general, are authorized to bring federal antitrust actions to recover damages on behalf of the citizens of their states.[1/] Using that authority, State attorneys general have represented consumers

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1/ 15 U.S.C. § 15c. See also Georgia v. Pennsylvania R.R., 324 U.S. 439 (1945) (common law parens patriae authority).

efficiently and effectively. The Amici States have a vital interest in preventing the erosion of their parens patriae authority.

The States play a major role in antitrust enforcement and have a substantial interest in ensuring that the antitrust laws are interpreted in accord with sound antitrust policy and the prior decisions of this Court.

The Amici States support the contention of Kansas and Missouri that the instant suit on behalf of residential consumers is within the cost-plus exception to Hanover Shoe, Inc. v. United Shoe Machinery Corp., 392 U.S. 481 (1968) and Illinois Brick Co. v. Illinois, 431 U.S. 720 (1977). Kansas and Missouri assert that the cost-plus exception controls because the federal [2/]

2/ See the Natural Gas Act, 15 U.S.C. § 717 et seq. (1982) and the Natural Gas Policy Act, 15 U.S.C. § 3301 et seq. (1982).

and state [3/] regulation of natural gas utilities creates a cost-plus pricing arrangement, passing on all of the increased cost of gas to the consumer.[4/]

The Tenth Circuit Court of Appeals rejected Kansas' and Missouri's contention, holding that the states could not bring a parens patriae action on behalf of their residential consumers who were indirect purchasers of the natural gas. See In re Wyoming Tight Sands Antitrust Cases, 866 F.2d 1286, 1294 (10th Cir. 1989), cert. granted sub nom. Kansas v. Kansas Power Light Co., 110 S. Ct. 833 (1990).

3/ See Kan. Stat. Ann. §§ 66-1,201, 66-1,206 (1985); Mo. Rev. Stat. §§368.250(5), 393.140(1), 393.270(2) (1986).

4/ Many of the Amici States have also enacted statutes that cause costs of natural gas production to be passed through to the ultimate consumers. See, e.g., Conn. Gen. Stat. § 16-196 (1989); Md. Code Ann. Art. 78 §54D (1980 Repl. Vol.); Mich. Comp. Laws § 460.6(h) (Cum. Supp. 1989); N.Y. Pub. Sev. L. §72-a (1989); Ohio Rev. Code §4905.302 (Supp. 1988); 66 Pa. Cons. Stat. Ann. §1307(f) (1984); Va. Code §56-235 (1986 Repl. Vol.).

SUMMARY OF ARGUMENT

Illinois Brick Co. v. Illinois, 431 U. S. 720 (1977), recognized that there are situations when indirect purchasers should be permitted to seek damages under Section 4 of the Clayton Act. This Court cited the "cost plus" exception and the "control exception" as examples of situations when the three concerns underlying the Illinois Brick decision - avoiding complicated apportionment of damages, ensuring vigorous enforcement of the antitrust laws, and avoiding duplicative damages - are met by allowing indirect purchasers to sue.

Regulatory cost-plus arrangements fall within the exception recognized by this Court. In the present case, rate regulation mandates a pass-through of fuel price increases. Yet, the Court below refused to allow residential consumers to sue for the overcharges because it erroneously believed that only cost-plus contracts for a "fixed quantity" came within the exception articulated in Illinois Brick. Illinois Brick

never stated, however, that a fixed quantity was essential to a cost-plus exception. Inherently, regulatory cost-plus contracts serve the economic function that fixed quantities serve in other cost-plus contracts.

The States, under the parens patriae authority granted by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, are best able to represent residential consumers. Congress intended that the cost and burden of representing natural persons should shift to the States. Utilities will have much less incentive to sue because State public utility commissions may well force them to distribute their damage recoveries among residential consumers.

The present case cannot be distinguished from Illinois v. Panhandle Eastern Pipe Line Co., 852 F.2d 891 (7th Cir.) (en banc), cert. denied, 109 S.Ct. 543 (1988). In both cases, the regulatory schemes required utilities to pass price increases on to residential consumers. Yet, only the Seventh Circuit's decision in

Panhandle Eastern and not the Tenth Circuit's decision below, comports with both the policies of Illinois Brick and the parens patriae provisions of Hart-Scott-Rodino. The decision below should be reversed.

ARGUMENT

I.

THE TENTH CIRCUIT FAILED TO COMPREHEND THE PROPER APPLICATION AND POLICY CONCERNS OF ILLINOIS BRICK.

A.

THE RULE OF ILLINOIS BRICK RECOGNIZES EXCEPTIONS.

In Illinois Brick Co. v. Illinois, 431 U.S. 720 (1977), this Court construed section 4 of the Clayton Act, 15 U.S.C. § 15 (1982), and determined that, for purposes of recovering monetary damages under federal antitrust laws, direct purchasers were generally the appropriate plaintiffs. In most situations, therefore, an indirect purchaser is not injured within the meaning of Section 4 of the Clayton Act. See Illinois Brick, 431 U.S. at 733-37.

Illinois Brick extended the reasoning in Hanover Shoe, Inc. v. United Shoe Machinery Corp., 392 U.S. 481 (1968). There the Court held that a direct purchaser is injured by the full amount of any overcharge paid by it. A defendant cannot, in most cases, raise as a defense the fact that the direct purchaser had passed on the overcharge to indirect purchasers. See Hanover Shoe, 392 U.S. at 487-94.

The rule of Hanover Shoe does not bar the use of the passing-on defense in all situations. This Court stated:

> We recognize that there might be situations - for instance, when an overcharged buyer has a pre-existing "cost-plus" contract, thus making it easy to prove that he has not been damaged - where the considerations requiring that the passing-on defense not be permitted in this case would not be present.

Hanover Shoe, 392 U.S. at 494. Similarly, Illinois Brick recognized that courts should not bar the recovery of damages by indirect purchasers in all situations. The Court gave two distinct examples of exceptions to its own rule: the "cost-plus" exception and the "control

exception." 431 U.S. at 735-36. As this Court recently stated in California v. ARC America Corp., 109 S. Ct. 1661, 1666 n.6 (1989):

> In Illinois Brick, the Court was concerned . . . that at least some party have sufficient incentive to bring suit. Indeed, we implicitly recognized as much in noting that indirect purchasers might be allowed to bring suit in cases in which it would be easy to prove the extent to which the overcharge was passed on to them.

The Tenth Circuit, erroneously relying on Illinois Brick as precedent, denied Kansas and Missouri the right to maintain this parens patriae action because the regulatory cost-plus arrangement did not require the purchaser to buy a fixed quantity of natural gas. Yet, Illinois Brick involved neither a cost-plus contract, a fixed quantity contract, nor a regulatory cost-plus contract. Thus, as the Court of Appeals for the Seventh Circuit concluded in Illinois v. Panhandle Eastern Pipe Line Co., 852 F.2d 891 (7th Cir.) (en banc), cert. denied, 109 S. Ct. 543 (1988), a decision to deny the States the right to seek damages for their

residential consumers in regulatory cost-plus cases is "not dictated by precedent." 852 F.2d at 893.[5/]

In the absence of clear precedent, the Seventh Circuit's approach in Panhandle Eastern is appropriate. It analyzed the underlying purposes of Illinois Brick rather than pulling isolated words out of context. Indeed, the Supreme Court recognized that where facts differ markedly from Illinois Brick, a different result may be warranted. Illinois Brick, 431 U.S. at 735-36; see also ARC America, 109 S. Ct. at 1661 n.6.

5/ In Panhandle Eastern, the court confronted an issue identical to the issue before this Court: May a State Attorney General bring a parens patriae action for damages on behalf of residential consumers who purchased natural gas via a regulatory cost-plus arrangement? The court, after careful analysis, concluded that this case came within the "cost-plus" exception to Illinois Brick and that the action could be brought.

B.

THE CONCERNS OF ILLINOIS BRICK ARE RESOLVED IN COST-PLUS CONTRACTS.

The Illinois Brick Court identified three "federal purposes"[6/] that underlie its decision: (1) avoiding involving federal courts in unnecessarily complicated proceedings to apportion damages between direct and indirect purchasers, 431 U.S. at 737; (2) providing incentives to assure the presence of a private plaintiff able to discover the violation and ready and willing to pursue its rights vigorously--usually, but not always, a direct purchaser, 431 U.S. at 745; and (3) avoiding subjecting defendants to multiple and duplicative liability, 431 U.S. at 730-31. The Court determined that, on balance, denying the indirect purchaser the right to collect damages in that case best fulfilled these goals.

6/ See California v. ARC America Corp., 109 S. Ct. 1661 (1989).

As the Seventh Circuit recognized in Illinois v. Panhandle Eastern, in the case of a cost-plus contract, the concerns underlying Illinois Brick balance out differently, and the indirect purchaser may maintain a damages action. 852 F.2d at 894-95. The court stated, "There is no longer a problem of apportionment, because the whole of any price increase will have been passed on to the customers by virtue of the contract". Id. at 894. Similarly, there is no problem with subjecting defendants to multiple or duplicative recoveries. If the rule of Illinois Brick does not apply, the rule of Hanover Shoe would apply to prevent the direct purchaser from recovering damages for overcharges passed on to its customers, the residential consumers. Finally, although the direct purchaser might have information about the violation and an incentive to sue, these facts alone should not deprive indirect purchasers of the right to seek damages. See 852 F.2d at 895.

In the present case, the Tenth Circuit held that the cost-plus exception was not available primarily because the utilities' contracts with their customers do not require the consumer to purchase a "fixed quantity" of natural gas. 866 F.2d at 1292 (1989). Determined to read exceptions to Illinois Brick "narrowly," the Tenth Circuit noted that the cost-plus contract example discussed in Illinois Brick contained a fixed quantity. 866 F.2d at 1290 (1989).

As pointed out in Panhandle Eastern, however, Illinois Brick had no occasion or need to define a cost-plus exception with any precision. 852 F.2d at 893. Indeed, with its "narrow" reading of the dictum in Illinois Brick, the Tenth Circuit fell into the linguistic trap identified in Panhandle Eastern: "We do a disservice to the Court by wrenching its words out of context and giving them a talismanic significance; we make language a trap rather than a mode of communication." 852 F.2d. at 893. Contrary to the opinion of the Tenth Circuit, regulatory cost-plus

contracts fit within the cost-plus exception to Illinois Brick as neatly as cost-plus contracts for fixed quantities.

C.

REGULATORY COST-PLUS CONTRACTS CONSTITUTE EXCEPTIONS TO THE RULE OF ILLINOIS BRICK.

A regulatory scheme that provides for automatic pass-through of fuel price increases operates identically to a fixed quantity cost-plus contract. Regulation is a stand-in for the quantity requirement in an ordinary contract.

Regulatory cost-plus pricing imposes the burden of all price increases on the residential indirect purchasers. As Judge Posner explained in Panhandle Eastern, 852 F.2d at 896, a natural gas utility has a natural monopoly in supplying gas to consumers' homes. It could exert monopoly power in pricing in the absence of public utility rate regulation because residential consumers have no alternative, in the short term, to purchasing their gas requirements from the

utility. Id. In the short term, natural gas demand is inelastic. A residential consumer cannot convert to another energy source without an unreasonable investment in new heating, cooling or cooking equipment. If regulation keeps a utility's rates below its preferred level, the utility will almost always raise its rates to the highest level permitted. Id. Thus, a utility maximizes profit by increasing its rates to pass on the full amount of the overcharges it pays. Id.

Even if residential customers reduce consumption in response to higher rates, due to rate regulation, the utility's loss could not be passed along to residential consumers. Id. As the Seventh Circuit noted, although the utility itself sustains a loss, the loss arises from a different set of transactions (lost profits on potential sales not made) from the loss sustained by residential consumers (overcharges on sales made). Id. Thus, the apportionment problem of Illinois Brick does not arise. Id. at 896-97. Similarly, there will be no risk of multiple liability. Both the utility and the consumers

can seek damages because they will be suing for different injuries. Id. at 897. Any complexity in the present case involves determining the separate and distinct damages that residential consumers and utilities have suffered. In contrast, the Illinois Brick Court was concerned with the complexities added by allocating damages between direct and indirect purchasers. See 431 U.S. at 741-44.

Just as in the case of the fixed-quantity contract, a utility can force the entire cost increase onto its residential customers without sacrificing profits. First, rate regulation mandates pass through. Second, the essential nature of the product, coupled with the customers' lack of viable alternatives, makes this case in actuality a cost-plus contract for a fixed quantity. At the very least, consumers must fill their requirements at the increased rate, and the essential nature of the product limits the degree to which consumers can curtail purchases.

Finally, regulatory cost-plus contracts provide even greater reason than do ordinary cost-plus contracts to find Illinois Brick inapplicable. As the Panhandle Eastern court observed, if, as is likely, a public utility commission forces the utility to pass on to the consumers any damages that the utility recovers, "utilities will have no incentive to sue because they will have nothing to gain from suit." Id. at 895. Moreover, a utility may be reluctant to sue its supplier for fear of jeopardizing their relationship.

No doubt the respondent-utilities will protest, with vigor, that in the instant case the utilities actually did sue. Yet, if, as the Seventh Circuit suggests may happen, public utility commissions require these utilities and others to pass on their recoveries, utilities will become "most reluctant suitor[s]" with little stake in the outcome. Id. at 895. The Tenth Circuit's prohibition of damage actions by residential consumers would then leave no plaintiff "to discover and aggressively assert antitrust claims", In

re Wyoming Tight Sands Antitrust Cases, 866 F.2d at 1292, and the intent of Illinois Brick would be frustrated.

II.

THE STATES ARE THE BEST REPRESENTATIVES OF RESIDENTIAL CUSTOMERS IN REGULATORY COST-PLUS CASES.

The Seventh Circuit's decision in Panhandle Eastern recognizes the injustice that would result from dismissing this parens patriae lawsuit. Moreover, it reconciles Illinois Brick with the intent of Congress in enacting The Hart-Scott-Rodino Antitrust Improvements Act of 1976 (hereinafter "Hart-Scott-Rodino").[7/]

Title III of Hart-Scott-Rodino empowers State attorneys general to enforce the federal antitrust laws by representing their resident natural persons.[8/]

7/ Pub. L. No. 94-435, 90 Stat. 1383 (1976). Title III added Sections 4C through 4H to the Clayton Act, 15 U.S.C. §§ 15c through 15h.

8/ Hart-Scott-Rodino constitutes an express recognition by Congress that States are the best (Continued)

Throughout the thirteen years since its creation, the States' parens patriae authority has been a powerful and effective weapon against antitrust wrongdoing.[9/]

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representatives of their citizens. In enacting Hart-Scott-Rodino, Congress conferred this parens patriae authority in response to California v. Frito-Lay, Inc., 474 F.2d 774 (9th Cir.), cert. denied, 412 U.S. 908 (1973). In Frito-Lay, the Ninth Circuit had held that the state could not maintain an action as parens patriae on behalf of citizen-consumers to recover monetary damages for injuries suffered from an alleged price-fixing conspiracy among snack food manufacturers. 474 F.2d at 777. The court recognized that California had advanced what was "perhaps the most suitable" answer to deal with the problem of antitrust deterrence, but declined to usurp the power of the legislative branch. Id.

9/ See, e.g., In re Panasonic Consumer Electronics Antitrust Litigation, Civ. Action No. 89 Civ. 0368 SWK (S.D.N.Y. 1989)) ($16 million parens settlement available for 665,000 consumers obtained by 49 States and the District of Columbia); In re Minolta Camera Products Antitrust Litigation, 668 F. Supp. 456 (D. Md. 1987) ($4 million parens settlement available for over 300,000 consumers obtained by 36 states and the District of Columbia). See also Massachusetts v. First National Supermarkets, Inc., Civ. Action No. 85-3835 (D. Mass. 1990) (coupons and food donations worth over $8 million obtained for Massachusetts citizens); Connecticut v. Waldbaum, Inc., Dkt. No. H-87-263 (D. Conn. 1987); Connecticut v. Stop & Shop Co., Inc., Dkt. No. H-86-688 (D. Conn. 1988) (in settlement of related parens cases, coupons valued at $21 million obtained for Connecticut consumers); In re Mid-Atlantic Toyota Antitrust Litigation, 605 F. Supp. 440 (Continued)

Courts have recognized the superiority of the parens patriae action as a tool for representing the collective claims of a State's citizens.[10/] Indeed, "it is difficult to imagine a better representative of the retail consumer within a state than the state's attorney general." In re Ampicillin Antitrust Litigation, 44 F.R.D. 269, 274 (D.D.C. 1972); see also In re Antibiotic Antitrust Actions, 333 F. Supp. 278, 280 (S.D.N.Y. 1971).

The decision below deprives residential consumers of a remedy for the overcharges they paid. Because any given consumer will not suffer enough damage to justify expending substantial amounts of

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(D. Md. 1984) ($5 million parens settlement for over 35,000 consumers obtained by five States and the District of Columbia); Florida v. Cargo Gasoline Co., Civ. No. 82-875-J-B (M.D. Fla. 1986) ($1.2 million parens settlement obtained for Florida consumers).

10/ "The parens patriae action is plainly superior to the [Rule 23] class action as a mode for adjudication of collective claims." In re Montgomery County Real Estate Antitrust Litigation, 1988-2 Trade Cas. (CCH) ¶ 68,230 (D. Md. 1978). See also Pennsylvania v. Budget Fuel Co., 1988-2 Trade Cas. (CCH) ¶ 68,229 (E.D. Pa. 1988).

time and money in protracted litigation, this is precisely the situation the parens patriae provisions of Hart-Scott-Rodino were designed to remedy.

Nevertheless, the court below stated that permitting the States to bring these parens patriae cases would reduce the direct purchasers' incentive to sue and would shift "the cost and incentive of policing and enforcing the antitrust laws to the states." 866 F.2d at 1291. The court's perspective is totally at odds with the concerns of Congress. In enacting Hart-Scott-Rodino, Congress decided that in cases where natural persons like residential consumers are injured, the cost and burden of representing these citizens should shift to the States.

State attorneys general have the incentive and the experienced, specialized antitrust counsel to prosecute these suits vigorously on behalf of their citizens. In contrast, regulated utilities have little incentive to prosecute antitrust claims on behalf of

residential consumers.[11/] Unless State attorneys general are allowed to represent residential consumers in these cases, price fixers may elude justice. Thus, the need for State attorneys general to represent their citizens is particularly important in cases of regulatory pass-ons.

The Seventh Circuit's opinion is consistent with this Court's recent decision in California v. ARC America Corp., 109 S. Ct. 1661 (1989), which recognized that indirect purchasers could, in certain instances, be better antitrust enforcers than direct purchasers. See 109 S. Ct. at 1666, n. 6. A regulatory cost-plus contract is one of those instances.

III.

THIS CASE CANNOT BE DISTINGUISHED FROM PANHANDLE EASTERN IN ANY MEANINGFUL WAY.

In attempting to distinguish the instant case from Panhandle Eastern, the Tenth Circuit found that:

11/ See Section I(C), supra.

> The most important difference between Panhandle Eastern and this case may be that there was apparently no doubt in Panhandle Eastern that the entire overcharge was passed on. . . . In this case, the amount of the overcharge passed on may be an unresolved question of fact.

866 F.2d at 1293.[12/] Astonishingly, the court then undermined its "most important distinction" by stating, "However, even if we assume, as we do for the purpose of deciding the issue before us, that there was a perfect and provable pass-on of the allegedly illegal overcharge, we are not persuaded that the facts of this case would place this case into the narrow exception to the [Illinois Brick] rule." 866 F.2d at 1293 (emphasis added). The court, thus, concedes that this case, in its appellate posture, is indistinguishable from Panhandle Eastern.[13/]

12/ The question certified in this case states that "all or most" of the overcharges were passed on.

13/ The Tenth Circuit goes to great lengths to distinguish this case from Panhandle Eastern on additional bases as well. None of these distinctions is relevant to the holding of the case, however. See, e.g., note 15, infra.

Even if the Tenth Circuit did attach real meaning to the uncertainty implicit in the certified question about whether 100 percent of the overcharge had been passed on, this factor is not a valid distinction. The Panhandle Eastern court, confronted with the same question, stated:

> True, we can never be absolutely certain that regulation has resulted in a 100 percent pass through. . . . No counterfactuals are certain, but the doubts here are too small to warrant our insisting that this potentially serious antitrust violation, which may have caused consumers of natural gas to pay almost $50 million in higher prices, shall go unremedied, as it may if we accept Panhandle's view of the scope of Illinois Brick.

852 F.2d at 898.

In the present case, however, there is little doubt that the pass-on was complete. The district court found that the facts of the instant case and Panhandle Eastern are identical. In re Wyoming Tight Sands Antitrust Cases, 695 F. Supp. 1109, 1117 (D. Kan. 1988).[14/] Kansas and Missouri also documented in

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14/ The Tenth Circuit incorrectly states that the (Continued)

their Petition for Certiorari that their regulatory schemes require regulated utilities to pass price increases to their residential consumers, just as the Illinois regulatory scheme in Panhandle Eastern. See Petitioners' Petition for Certiorari at 4, n.3, In re Wyoming Tight Sands Antitrust Cases, 866 F.2d 1286, cert. granted sub nom. Kansas v. Kansas Power & Light Co., 110 S. Ct. 833 (1990); Panhandle Eastern, 852 F.2d at 895.[15/] This Court must choose between

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Panhandle Eastern court found Tight Sands distinguishable from Panhandle Eastern. In fact, the Panhandle Eastern court identified the Tight Sands decision as one presenting a differing legal result which it would not follow.

15/ The Tenth Circuit states that utility companies here occupy "different levels on the distribution chain within two States" while Panhandle Eastern dealt only with the consumers of one utility. The court also notes that Kansas and Missouri have different regulatory schemes while the Panhandle Eastern court had to analyze only one scheme. These distinctions are immaterial. If any utility company is itself an indirect purchaser, then both the utility and its customers may be barred under the rule of Illinois Brick. However, if utilities are direct purchasers and pass on their damages to their indirect purchaser residential users via a cost-plus contract, then to that extent this case is precisely like Panhandle Eastern.

Panhandle Eastern and the Tenth Circuit's opinion in this case. The cases cannot be reconciled.

IV.

RECOGNIZING A REGULATORY COST-PLUS EXCEPTION IS CONSISTENT WITH ILLINOIS BRICK AND THE INTENT OF CONGRESS IN ENACTING HART-SCOTT-RODINO.

The Seventh Circuit's decision in Panhandle Eastern comports with both the policies of Illinois Brick and the parens patriae provisions of Hart-Scott-Rodino. The court recognized that permitting an action on behalf of residential purchasers of natural gas pursuant to regulatory cost-plus pricing does not offend the policies articulated in Illinois Brick. Further, the Seventh Circuit also permitted the Attorney General of Illinois to act in the manner authorized by Hart-Scott-Rodino. The parens patriae suit allowed the Attorney General to protect the residential consumers of his State and to ensure vigorous enforcement of the antitrust laws.

In contrast, the decision of the Tenth Circuit ignores the public policy concerns of Illinois Brick. Moreover, by expressing concern that Kansas and Missouri sought to "shift" to the States the responsibility of prosecuting antitrust cases on behalf of their citizens, the lower court subverts the important goals of Hart-Scott-Rodino. This decision hampers the ability of attorneys general to maintain suit when numerous citizens have been injured. Yet, Congress enacted Hart-Scott-Rodino to permit this type of suit. The Court should reaffirm the intent of Congress and permit the States to have the broadest possible power to vindicate the rights of injured citizens.

CONCLUSION

For the foregoing reasons, this Court should reverse the decision of the United States Court of Appeals for the Tenth Circuit.

DATED: March 2, 1990

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